HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.14182 OF 2006

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Between:

Katipalli Narasimha Reddy

…Petitioner

A n d

Andhra Pradesh State Consumer Disputes
Redressal Commission & Others.

…Respondents

:: **O R D E R** ::

Counsel for the Petitioner : Sri C.Ramesh Sagar

13th July, 2006

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Per G.V.Seethapathy, J.

This is a petition for quashing orders dated 30-08-2004 and 13-04-2006 passed by District Consumer Forum, Karimnagar (for short 'the District Forum') and Andhra Pradesh State Consumer Disptues Redressal Commission (for short 'the State Commission') respectively. Another prayer made in the writ petition is to stay the proceedings of P.P No. 133 of 2005 pending before the District Forum.

The petitioner is one of the partners of the Firm M/s. Raja Rajeshwara Hire Purchase Finance, Jagtial. Respondents 3 to 17 deposited a sum of Rs.5,000/- each with the firm on the assurance of its Manager that after completion of 66 months, they would be paid Rs.10,000 each. In order to make this assurance creditable, the firm issued Fixed Deposit receipts in favour of respondents 3 to 17 for an amount of Rs.5,000/- each. However after expiry of the time schedule, the firm did not pay the amount due to respondent Nos.3 to 17. Therefore, they filed complaint under Section 12 of the Consumer Protection Act, 1986 (for short 'the 1986 Act') impleading the firm through the petitioner as opposite party.

Notice of the complaint filed by respondent Nos. 3 to 17 was duly served on the opposite party but neither any reply was filed nor anyone appeared to contest the claim. Therefore, the District Forum ordered ex parte proceedings. After hearing the representative of the complainants, the District Forum passed order dated 30-08-2004 whereby it allowed the complaint and directed the opposite party to

pay maturity amounts to each of the complainants (respondent Nos. 3 to 17 herein) with interest at the rate of 9% per annum from the date of maturity to the date of payment and costs of Rs.500/- to each one of them.

The appeal preferred by the appellant against the order of the District Forum was dismissed by the State Commission vide its order dated 13-04-2006.

Sri C. Ramesh Sagar argued that in view of the provisions contained in Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (for short 'the 1999 Act'), the District Forum could not have entertained the complaint preferred by respondent Nos. 3 to 17. He submitted that the 1999 Act constitutes a complete code in the matter of recovery of the amount due to the depositor and, therefore, the District Forum did not have the jurisdiction to entertain the complaint filed under Section 12 of the 1986 Act.

We have thoughtfully considered the arguments and submissions of the learned counsel, but have not felt persuaded to entertain the writ petition. Undisputedly, the firm, which was impleaded as opposite party in the complaint filed by respondent Nos. 3 to 17, did not appear to contest the complaint. Therefore, the District Forum ordered ex parte proceedings and directed the opposite party to pay the amount due to respondent Nos.3 to 17 along with interest and costs. In the appeal filed by him before the State Commission, the petitioner did not challenge the jurisdiction of the District Forum by invoking the provisions of the 1999 Act. The only plea raised by him was that he was an employee of the firm and not a partner. This plea was rejected by the State Commission by making reference to the proceedings of appeal filed against order dated 01-03-2001 passed in

C.D No. 801 of 1998 wherein he described himself as Manager and Managing Director of the firm. In the opinion of the State Commission, after having described himself as Manager and Managing Director of the firm, it was not open for the petitioner to turn around and contend that he is only an employee of the firm. The State Commission further observed that the appellant (petitioner herein) has not produced any evidence to show that he was an employee of the firm. In our opinion, the view of the State Commission on the tenability of the petitioner's plea that he was only an employee of the firm and was, therefore, not liable to repay the amount deposited by the complainants is legally correct and does not call for interference under Article 226 of the Constitution of India. we are further of the view that by having refrained from putting up appearance before the District Forum which resulted in ex parte proceedings against the firm and by not raising this plea before the State Commission, the petitioner will be deemed to have waived his challenge to the competency of the District Forum to entertain the complaint filed by respondent Nos.3 to 17.

Even otherwise, we are convinced that the provisions contained in the 1999 Act cannot be construed as imposing bar to the jurisdiction of the District Forum to entertain the complaint made under Section 12 of the 1986 Act. The 1999 Act has been enacted by the State Legislature for protecting the interests of depositors. Section 2 (b) of the 1999 Act defines the term 'deposit' as the deposit of sum of money either in lumpsum or instalments made with a financial establishment for a fixed period, for interest or return in any kind. Section 2 (c) defines the term 'financial establishment' as an individual, an association or body of individuals or a firm carrying on the business of receiving deposits under any scheme or arrangement or in any other manner but does not include a company registered under the

Companies Act, 1956 or a corporation or a cooperative society owned and controlled by any State Government or the Central Government, or a banking company as defined in Section 5(c) of the Banking Regulation Act, 1949 or a non-banking financial company as defied in Clause (f) of Section 45-I of the Reserve Bank of India Act, 1934. Section 3 which beings with non obstante clause lays down that where any financial establishment defaults or is likely to default in the return of deposits in cash or kind, the Government can pass interim order for attaching the money or other property belonging to financial establishment. Section 4 defines the competent authority to exercise control over the properties attached by the Government under Section 3. Section 5 provides for penalty for default in the return of deposit or payment of interest. Sections 6 and 7 provide for constitution of special courts to deal with the cases of the defaulters and powers of such courts to attach the property of the defaulting financial establishment or the concerned person.

The 1989 Act was enacted by the Parliament to provide for better protection of the interests of consumers. Chapter III of the Act provides for establishment of consumer disputes redressal agencies at the district level, state level and national level; jurisdiction of these agencies and procedure to be followed for redressal of the grievances of the consumers. The district forums are empowered to deal with the complaints relating to defects in the goods or deficiency of services. The purposes and schemes of the two enactments are entirely different and there is no inconsistency in them. While the consumer fora created under the 1986 Act gives protection to the consumers against defective goods and services, the 1999 Act provides for imposition of penalty on the financial establishments committing default in the return

of deposit and payment of interest. In our opinion, the statutes are complementary to each other. Therefore, it is not possible to agree with the learned counsel for the petitioner that the District Forum did not have the jurisdiction to entertain the complaint made by respondent Nos. 3 to 17.

With the above observations, the writ petition is dismissed.

G.V.SEETHAPATHY, J

G.S.SINGHVI, CJ

13th July 2006

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HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

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(Order of the Bench delivered by
Hon'ble Sri Justice G.V.Seethapathy)

DATED : 13.07.2006